

**Letter of Findings: 01-20210025
Individual Income Tax
for the Tax Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Finding.

HOLDING

Individual did not meet the burden of proof regarding his protest that the Department should not have assessed county income tax.

ISSUE

I. Individual Income Tax - County Withholding Tax Credits.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-2; IC § 6-3.6-8-5; IC § 6-8.1-5-1; Income Tax Information Bulletin 28 (November 2016); Income Tax Information Bulletin 33 (April 2008); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014). *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is a Kentucky resident who works in Indiana. The Indiana Department of Revenue ("Department") reviewed Taxpayer's 2019 income tax return and determined that Taxpayer owed additional Indiana county income tax for that year. The Department issued Taxpayer a proposed assessment for underpayment of county income tax. Taxpayer protested the assessment and elected to have the Department make its decision without a hearing. This Letter of Finding results. Additional facts will be provided as necessary.

I. Individual Income Tax - County Income Withholding Tax Credits.

DISCUSSION

Taxpayer is a legal resident of Kentucky and works in Indiana for an Indiana company. Taxpayer's company withheld Indiana county income tax for the 2019 tax year. Taxpayer was assessed additional Indiana county income tax after the Department reviewed his 2019 Indiana income tax return. With his protest, Taxpayer has provided a copy of the proposed assessment and a letter restating his Kentucky residency. Taxpayer protests that the reciprocal income tax relationship between Kentucky and Indiana and the fact that his employer withheld Indiana county income tax, means the additional proposed assessment is not applicable to him.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a)

specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. To efficiently compute an Indiana resident's state income tax, Indiana law references a taxpayer's federal Adjusted Gross Income ("AGI") as determined under the Internal Revenue Code. IC § 6-3-1-3.5(a) provides that Indiana taxpayer must use that federal AGI as the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter. Indiana has entered into state income tax reciprocal agreements with several states in order to allow residents of one reciprocal state to work in another reciprocal state while paying state income taxes to the home state. However, IC § 6-3.6-8-5(b) specifically *excludes* county income tax from reciprocity. Under the reciprocity agreement, "a credit for Indiana state and county tax withholding amounts will be allowed, and any Indiana county tax liability will be figured." Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA.

The Department's Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA further explains the following:

III. RECIPROCAL AGREEMENT STATES

Five states have an agreement with the state of Indiana. They are **Kentucky**, Michigan, Ohio, Pennsylvania, and Wisconsin. All salaries, wages, tips, and commissions earned in these states by an Indiana resident must be reported as if they were earned in Indiana. A credit cannot be taken for any taxes withheld by or paid to any of these states in connection with income from salaries, wages, tips, and commissions. If taxes have been withheld or paid to any of these states, a claim for refund should be filed with that state by filing that particular state's income tax form for nonresidents. Residents of Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin who have Indiana income will report and pay tax on that income to their state of residence. If a resident of one of the above states has wages, salaries, tips, or commissions from Indiana sources and the individual's only income from Indiana sources is wages, salaries, tips, or commissions, Form IT-40RNR must be filed. **A credit for Indiana state and county tax withholding amounts will be allowed and any Indiana county tax liability will be figured.** If a resident of one of the above states has income from Indiana other than wages, salaries, tips, or commissions, Form IT-40 must be filed.
(Emphasis added).

Further, Income Tax Information Bulletin 33 (August 2008), 2008027 Ind. Reg. 045080660NRA provides:

III. TAXES NOT AFFECTED

Indiana reciprocity agreements do not affect withholding requirements concerning the **Indiana County Adjusted Gross Income Tax (CAGIT)**, County Economic Development Income Tax (CEDIT), or County Option Income Tax (COIT).
(Emphasis added).

Therefore, under the reciprocal state income tax agreement between Kentucky and Indiana, Indiana county income taxes are due based on wages, salaries, tips, or commissions earned in the relevant Indiana county. In the instant case, Taxpayer worked in Indiana and resided in Kentucky. Indiana county income tax is still due. The Department's review of the documents that Taxpayer provided and of the Department's records determined that the Department correctly assessed Taxpayer's additional Indiana county income tax on earned wages, salary, tips, or commissions in Indiana and so owes Indiana county income tax on that income. While Taxpayer is correct about Kentucky and Indiana having a reciprocal agreement for state income taxes, IC § 6-3.6-8-5(b) specifically excludes county income taxes from the agreement. Taxpayer has provided no documentation that the Department's calculations are incorrect and therefore did not meet his burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

July 27, 2022

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